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IN THE

Supreme Court of The United States

No. 1154

OCTOBER TERM, 1967.

HANSEL WALLACE,
Petitioner,

vs.

COMMONWEALTH OF VIRGINIA,
Respondent.

REPLY BRIEF TO PETITION FOR A WRIT OF CERTIORARI.

DICK B. ROUSE
Reynolds Arcade Building
Bristol, Virginia
Commonwealth Attorney for the
City of Bristol, Virginia

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IN THE

Supreme Court of The United States

HANSEL WALLACE

Petitioner

vs.

COMMONWEALTH OF VIRGINIA

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO: THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF APPEALS

PRELIMINARY STATEMENT

The petitioner, sometimes hereinafter referred to as "Appellant", was convicted in the Corporation Court of Bristol, Virginia, by jury trial on the charge of being in violation of Section 40-64 of the Code of Virginia, and sentenced to the payment of a $300.00 fine and six months in jail. Immediately after the verdict was rendered by the jury upon motion of appellant, the Court suspended the six months jail sentence imposed by the jury. Appellant now seeks to reverse this conviction as contrary to the law and without evidence to support the verdict and other grounds assigned in his petition.

In referring to the record, the symbol "R" will be used to indicate court papers, and "TR" will be used to indicate the transcript.

STATEMENT OF FACTS

The appellant was tried in the Municipal Court for the City of Bristol upon a warrant charging violation of Section 40-64 of the Virginia Code and convicted, to which judgment appellant appealed the case to the Corporation Court for the City of Bristol, and there tried by a jury at the May term of Court, 1967.

The section under which he was charged provides as follows:

"No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

"No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or obstruct or interfere with free use of public streets, sidewalks or other public place . . . etc.

"Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly."

The alleged incident occurred on March 2, 1967, in Bristol, Virginia. At that time, the Monroe Calculating Company Plant was undergoing a strike and had been for some period of time prior to that date. Feeling was running high between the striking employees and those employees who remained on the job. The appellant, Wallace, was a picketing striking employee. Tate, the prosecuting witness, was a member of the union which had called the strike but who chose to continue working because he did not agree with the union's decision to strike. The strikers would form lines on both sides of the highway to the approaches

to the entrances to the Monroe Calculating Company's Plant and would jeer and harrass those employees who chose to continue going in and out of the plant to perform their regular duties. Appellant, Hansel Wallace, was with a number of striking employees who were standing along said approaches to the plant at approximately 3:30 to 3:45 P.M. on that date. At that time and place, the non-striking employee, Ted Tate, was driving his Dodge pick-up truck from his place of employment when Hansel Wallace held up a large sign nailed to a stick of wood which read in large block letters, "We will remember you" and as Tate approached, he flipped another portion of the sign which had in large block letters, "T A T E" (TR 6, lines 1-11) making it read "Tate, we will remember you". As Mr. Tate approached this assembled crowd, he observed that the strikers were lined up on both sides of the road and crowding on to the hard surface of said road and he placed his pick-up truck in second gear in order to slow it down and have it under better control in the event that any of the crowded strikers came into danger of being struck by his vehicle. As he came along side appellant, Wallace, he stated that Wallace, who was holding the sign up for him to see, "hit down over the windshield with the sign" (TR 6, lines 1-22). Tate very frankly admitted that his truck may have wobbled in the road or that he turned it away from other strikers toward Wallace.

The feeling had been running so high during the strike that a number of officers were strategically placed in the vicinity of the plant where the strikers were congregating and when this occurrence took place, Captain Kristofek of the Bristol, Virginia, Police Department, felt that the driver of the truck, Tate, had "cut a dip at the strikers", and he immediately pulled Tate over to the side of the road for the purpose of charging him with violation of the law. And while he, Captain Kristofek, was sitting in the cab of the truck with Mr. Tate to see his driver's permit before making a charge against him, the appellant, Wallace, accompanied by other strikers, came up to the truck and stated directly to Tate "I will remember you" and "I'll see you later, old man" (TR 7, lines 2-25). Mr. Tate was

charged with an attempted assault with his vehicle which charge was later dismissed, and the charges against the appellant followed thereafter of which he is now seeking for writ of certiorari.

ARGUMENT

As stated above, it is the contention of the appellee, Commonwealth of Virginia, that the only issue that is not facetious is the question as to whether there was sufficient evidence upon which to sustain verdict of the jury.

Mr. Tate testified that he was fifty-two years of age; that he was, at the time of the incident and for some time prior to the incident, a member of the striking union and had been employed for a period of three years by Monroe Calculating Company (TR 4, lines 7-25). He testified that there were approximately seventy-five to eighty strikers on either side of the highway when the incident took place and were crowding out on to the hard surface of the roadway (TR 8, lines 6-19), and that he was called names; Officer Smith of the Bristol, Virginia, Police Department corroborates Mr. Tate's testimony by stating on TR 15 that when Tate approached the crowd of strikers in which appellant was among that they did shout "here he comes" and that Wallace held up the sign with "Tate, we will remember you", and as the truck passed Wallace, "the sign hit the truck and the sign made contact". Officer Smith also testified (TR 16, lines 13-18) that the crowd which included appellant Wallace, at the time of the occurrence, were using profanity and other violent language. Officer Joe Honaker, on Page 19 (TR lines 3-6, Page 20), corroborates Tate and Smith as to what took place, the number of strikers involved, their conduct, their singling out of Tate and his vehicle, and described the manner in which the sign singled out Tate.

Captain Andrew Kristofek of the Bristol, Virginia, Police Department, who arrested Tate, corroborates Mr. Tate's testimony about the lettering on the sign, the sign

coming into contact with the truck (TR 23, 24, & 25). On TR 25, lines 1-5, he states, "Hansel Wallace was standing right near the door as I got in the cab, I was in the driver's side, he said, Old Man, we will remember you, and Mr. Tate said to me while I was in the cab, do you hear that? I said yes, move on, we are going to headquarters". Corroborating Mr. Tate's testimony that Wallace, in the presence of other strikers, made the threatening statement directly to Tate.

Appellee submits that there was sufficient evidence for the jury to find the verdict rendered in this case. Mr. Tate, as an employee of Monroe Calculating Company and as a member of the union and as a member of society is entitled to the protection provided by Section 40-64 of the Code of Virginia in his inherent right to work free from the clear and present danger of harm by those who by the use of force, threats, violence, intimidation, or insulting words would prevent the exercise of that right. It is the contention of the Commonwealth that the appellant by his actions and words were in direct controvention of the statute and that his actions were so inherently wrong and liable as to bring about an immediate breach of the peace which was only averted by the presence of the Bristol, Virginia Police Officers at the scene of the offense on the day in question.

CONCLUSION

The judgment of the jury is plainly right and the Petition For Certiorari should accordingly be denied.

Respectfully submitted,

Dick B. Rouse
Commonwealth's Attorney
for the City of Bristol, Virginia

DICK B. ROUSE
Attorney at Law
Reynolds Arcade Building
Bristol, Virginia

I, Dick B. Rouse, counsel for Respondent, Commonwealth of Virginia, certify that on the 31st day of May, 1968, a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari was mailed to David S. Haynes of Curtin, Haynes and Winston, Attorneys at Law, Bristol, Tennessee, and to Daniel Woodrow Bird, Jr., Wytheville, Virginia, Counsel for Appellant.

Dick B. Rouse
Commonwealth Attorney
City of Bristol, Virginia